

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3125
Administrative Law Judge Division
December 18, 2003

R E S O L U T I O N

RESOLUTION ALJ 176-3125. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3125 (12/18/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-11-026 EVERCOM SYSTEMS, INC., for a Certificate of Public Convenience and Necessity to provide Switchless Resale of Interexchange Telecommunications Services within the State of California.	Ratesetting	Ratesetting	NO
A03-11-027 SOUTHERN CALIFORNIA EDISON COMPANY, SPRINT COMMUNICATIONS COMPANY, (U 338-E), for Authority to Lease Certain Optical Fibers to Sprint Communications Company, LP, a Limited partnership organized in the State of Delaware.	Ratesetting	Ratesetting	NO
A03-12-004 CHINA TELECOM CORPORATION, for a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange and interexchange service.	Ratesetting	Ratesetting	NO
A03-12-005 ALTRIO COMMUNICATIONS, INC., for a certificate of public convenience and necessity to provide facilities-based competitive local exchange and intraLATA service in Arcadia, Sierra Madre, Monrovia and certain parts of Los Angeles County (Altadena, Kinneloa, Chapman Woods, La Cresenta/Montrose and South Monrovia unincorporated areas.	Ratesetting	Ratesetting	NO
A03-12-006 SOUTHERN CALIFORNIA EDISON COMPANY, for authority to lease available land located on the Center-Del Amo transmission right to way to CT Storage-Bellflower, LLC.	Ratesetting	Ratesetting	NO
A03-12-007 SOUTHERN CALIFORNIA EDISON COMPANY, for authority to lease available land located on the Barre-Ellis transmission right of way to Huntington Center Associates, LLC.	Ratesetting	Ratesetting	NO
A03-12-008 CALIFORNIA WATER SERVICE COMPANY, for an order authorizing treatment of net proceeds from real property sales as subject to Public Utilities Code Section 790 and for establishment of memorandum accounts to record net sales proceeds.	Ratesetting	Ratesetting	YES

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3125 (12/18/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-12-010 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E), for a finding of prudence regarding its Power Procurement Activities, and for approval of expenses recorded to the Electric Resource Recovery Account.	Ratesetting	Ratesetting	YES
A03-12-013 YOONOS, MOHAMMAD, to transfer its passenger stage authority (PSC-14336) to Discount Shuttle L.L.C. and to request authority to extend its service area to include San Diego Airport, Palm Springs Airport, and the counties of San Diego and Ventura.	Ratesetting	Ratesetting	NO
A03-12-014 ANTELOPE VALLEY BUS, INC., CUSA CC, LLC, dba AIRPORT BUS OF BAKERSFIELD/ANTELOPE VALL, for approval of the transfer of the operating authority held by Transferor in passenger stage corporation certificates 1166 and/or 639 from Transferor to Transferee, pursuant to the provisions of Public Utilities Code Sections 851 et seq.	Ratesetting	Ratesetting	NO
A03-12-015 PACIFIC GAS AND ELECTRIC COMPANY, for authorization pursuant to Public Utilities Code Section 851 to grant easements for installation, operation maintenance and use of domestic water wells.	Ratesetting	Ratesetting	NO
A03-12-016 SAN DIEGO GAS & ELECTRIC COMPANY, for a permit to construct the Mira Sorrento Substation.	Ratesetting	Ratesetting	YES
A03-12-017 SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART), for an order authorizing construction of an elevated structure crossing above BART tracks and the tracks of the Union Pacific Oakland Subdivison and Niles Subdivison.	Ratesetting	Ratesetting	NO
A03-12-018 GERRY LABUDDE, SLEEPY HOLLOW ACRES, INC., dba WEIMAR WATER COMPANY, to sell and Gerry LaBudde to buy the water system in Placer County.	Ratesetting	Ratesetting	NO
A03-12-019 GREAT AMERICAN STAGELINE, INC., SANTA BARBARA AIRBUS, Application to sell and transfer ownership of operating authority in PSC-962 from Great American Stageline, Inc. to Santa Barbara Airbus, Inc.	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULE**

Resolution ALJ 176-3125 (12/18/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-12-021 ALAMEDA CORRIDOR - EAST CONSTRUCTION AUTHORITY, for an order authorizing elimination of two existing at-grade crossings through construction of a grade separated crossing (roadway underpass) at Ramona Boulevard, under Union Pacific Railroad Company's Alhambra Subdivision main line and Southern California Regional Rail Authority's San Gabriel Subdivision main line, in the City of El Monte, County of Los Angeles.	Ratesetting	Ratesetting	NO